

filed. A booster station shall not be required to protect from interference facilities proposed on or after the day the application or notification for the booster station is filed.

(g) Where an application is granted under paragraph (d) of this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a high-power ITFS signal booster station is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party.

(h) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each non-co/adjacent channel signal booster station within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a signal booster station contributing to such interference shall bear the joint and several obligation to remedy promptly all interference resulting from block downconverter overload at any ITFS registered receive site or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by signal booster station licensees to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one signal booster station licensee contributes to block downconverter overload

interference at an MDS or ITFS receive site, such licensees shall cooperate in good faith to remedy promptly the interference.

[63 FR 65125, Nov. 25, 1998, as amended at 64 FR 63743, Nov. 22, 1999; 65 FR 46624, July 31, 2000]

EFFECTIVE DATE NOTE: At 65 FR 46624, July 31, 2000, § 74.985 was amended by adding (b)(8) and (e)(4)(ix). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 74.986 Involuntary ITFS station modifications.

(a) Parties specified in paragraph (b) of this section may, subject to Commission approval, involuntarily modify the facilities of an existing ITFS licensee in the following situations:

(1) If the initiating party is prevented from invoking the 0 dB interference protection standard (see § 21.902(f)(2) of this chapter and § 74.903(a)(2) of this part) for projecting its impact on an existing ITFS licensee because of that licensee's pre-May 26, 1983, facilities, the applicant, permittee or licensee may modify the facilities of the pre-existing ITFS station with equipment adequate to perform at that level of interference;

(2) If the initiating party is prevented from operating at a higher transmitter output power or EIRP because such power level will cause harmful interference to an ITFS station and modifying the ITFS station will avoid such harmful interference;

(3) If the initiating party is prevented from installing a signal booster because such installation will cause harmful interference to an ITFS station and modifying the ITFS station will avoid harmful interference;

(4) If an ITFS licensee uses equipment incapable of meeting the aural power standard specified in § 74.935(d) and that equipment becomes a source of harmful adjacent-channel interference, and other equipment would avoid such harmful interference.

(5) If an ITFS licensee uses equipment incapable of meeting the transmitter tolerance standard specified in § 74.961 of this part and that equipment

becomes a source of harmful co-channel interference, and other equipment would avoid the harmful interference;

(6) If an ITFS licensee uses equipment incapable of meeting the out-of-band emissions standard specified in § 74.936 of this part and that equipment becomes a source of harmful adjacent-channel interference, and other equipment would avoid the harmful interference; and

(7) If harmful adjacent-channel interference may be avoided by colocation of an ITFS facility with its own facilities.

(8) There are no response station hubs licensed to or previously-proposed by any of the parties specified in paragraph (b) of this section, in the same system as the existing ITFS licensee of whose facilities involuntary modification is sought; however, in no event shall the Commission approve an involuntary retuning of an existing ITFS licensee's station to other frequencies, except as provided in § 74.902(i) through (k).

(b) Involuntary modification may be sought by an MDS, MMDS or ITFS licensee, conditional licensee, permittee or applicant. Opposed applicants do not have authority to seek involuntary colocation. An opposed application is one that faces a competing application(s) or petition(s) to deny. Applicants will be required to confirm their unopposed status after the period for competing applications and petitions to deny has passed. If an initiating application is opposed, the companion ITFS modification application will be returned. It may be refiled when the initial application is again unopposed.

(c) The application for involuntary modification must be prepared, signed and filed by the initiating party. The applicant must submit FCC Form 330 but need not fill out section II (Legal Qualifications), and the application must include a cover letter clearly indicating that the modification is involuntary and identifying the parties involved. A copy of the application must be served on the affected ITFS party on or before the day of filing. The ITFS party to be modified will have a 60-day period in which to oppose the modification application; the opposition should state objections to the modification

with specificity, including engineering and other challenges. If the modification includes colocation, the opponent should address the desirability of the present site compared to the proposed new site.

(d) The party initiating the modification will be responsible for all costs connected with the modification, including purchasing, testing and installing new equipment, labor costs, reconfiguration of existing equipment, administrative costs, legal and engineering expenses necessary to prepare and file the modification application, and other reasonable documented costs. The initiating party must secure a bond or establish an escrow account to cover reasonable incremental increase in ongoing expenses that will fall upon the modified ITFS entity and to cover expenses that would inure to the modified ITFS entity in the event the initiating party becomes bankrupt. In establishing a bond or escrow amount, such factors as projected electricity or maintenance expenses, or relocation expenses must be taken into account, as relevant in each case.

(e) The involuntarily modified facilities must be operational before the initiating party will be permitted to begin its new or modified operations. The modification must not disrupt the ITFS licensee's provision of service, and the ITFS licensee has the right to inspect the construction or installation work.

[56 FR 57820, Nov. 14, 1991, as amended at 63 FR 65127, Nov. 25, 1998]

§ 74.990 Use of available instructional television fixed service frequencies by wireless cable entities.

(a) Notwithstanding the provisions §§ 74.931 and 74.932 of this part, a wireless cable entity may be licensed on instructional television fixed service frequencies in areas where at least eight other instructional television fixed service channels remain available in the community for future ITFS use. Channels will be considered available for future ITFS use if there are no co-channel operators or applicants within 80.5 km (50 miles) of the transmitter site of the proposed wireless cable operation, and if the transmitter site remains available for use at reasonable